

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Petition for Extension of Waiver by Cable &	)	
Communications Corporation	)	
	)	

**ORDER**

**Adopted: October 26, 2007**

**Released: October 26, 2007**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this Order, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Cable & Communications Corporation (C&CC),<sup>1</sup> a Tier III wireless service provider.<sup>2</sup> C&CC seeks an extension of time from its current deadline to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration among their subscribers of location-capable handsets by December 31, 2005.<sup>3</sup>

2. Pursuant to the ENHANCE 911 Act,<sup>4</sup> and based on the record before us, we find that some relief from the 95% penetration requirement is warranted, subject to certain conditions described below. We therefore grant C&CC a further extension, until April 26, 2008, to achieve 95% penetration among its subscribers of location-capable handsets.

**II. BACKGROUND**

**A. Phase II Requirements**

3. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911

<sup>1</sup> Petition for Extension of Waiver, CC Docket No. 94-102 (filed July 17, 2007) (Petition).

<sup>2</sup> Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

<sup>3</sup> 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted C&CC waiver relief from the 95% handset penetration deadline until September 23, 2007. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 3760, 3767-68 ¶ 20 (2006) (*C&CC Waiver Order*).

<sup>4</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

calls.<sup>5</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>6</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>7</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>8</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>9</sup>

4. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.<sup>10</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.<sup>11</sup>

## B. Waiver Standards

5. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.<sup>12</sup> The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."<sup>13</sup> To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.<sup>14</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must

<sup>5</sup> See 47 C.F.R. § 20.18(e).

<sup>6</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3.

<sup>7</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3.

<sup>8</sup> See 47 C.F.R. §§ 20.18(f), (g)(2).

<sup>9</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>10</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>11</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>12</sup> *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; see also *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that "wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that "under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted").

<sup>13</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

<sup>14</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

provide sufficient and specific factual information.<sup>15</sup> A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.<sup>16</sup> The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>17</sup>

6. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>18</sup> In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

7. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>19</sup> The ENHANCE 911 Act, *inter alia*, directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>20</sup>

### C. C&CC's Request for Further Waiver

8. C&CC is a Tier III carrier providing cellular service in rural areas of Montana and North Dakota.<sup>21</sup> In December 2005, C&CC requested that the Commission allow it an additional 30 months, until June 30, 2008, to achieve a 95% location-capable handset penetration rate.<sup>22</sup> The Commission

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<sup>15</sup> See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>16</sup> See *id.*

<sup>17</sup> *Id.* at 20997 ¶ 28.

<sup>18</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

<sup>19</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>20</sup> *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* § 107(b), 118 Stat. 3986, 3991.

<sup>21</sup> Petition at 2.

<sup>22</sup> Cable & Communications Corporation Petition for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102 (filed Dec. 13, 2005).

granted C&CC's request in part, subject to conditions and reporting requirements, and established a compliance deadline of September 23, 2007.<sup>23</sup>

9. In the instant Petition, C&CC describes various efforts to achieve compliance with the handset penetration deadline, including bill inserts to customers, print and radio advertising, and offering discounted and free phones with a service commitment.<sup>24</sup> C&CC reports that these efforts resulted in a handset penetration rate of approximately 84% at the time it filed its petition.<sup>25</sup> Nonetheless, C&CC states that it will require an additional 12 months, until October 1, 2008, to achieve a 95% location-capable handset penetration rate.<sup>26</sup>

10. In support of its request, C&CC states that "a relatively small but adamant portion of [its] rural subscriber base is simply unwilling to give up their analog phones."<sup>27</sup> C&CC asserts that without the requested relief, there would be "no practical alternative to ensuring that basic and Phase I E-911 services are available to C&CC's analog wireless customers."<sup>28</sup> C&CC notes that in approximately 80% of its service territory, it provides the only wireless service.<sup>29</sup> C&CC argues that, for these reasons, its request meets the standard for relief under the ENHANCE 911 Act as well as the Commission's E911 waiver standards.<sup>30</sup>

### III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.<sup>31</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.<sup>32</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we are mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful,

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<sup>23</sup> *C&CC Waiver Order*, 21 FCC Rcd at 3867-68 ¶ 20.

<sup>24</sup> Petition at 3.

<sup>25</sup> *Id.* at 2. In its August 1, 2007 quarterly report, C&CC reported a handset penetration rate of 85%. See C&CC August 1, 2007 Quarterly Report at 1.

<sup>26</sup> Petition at 5.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.*; see also Supplement to Petition for Extension of Waiver, CC Docket No. 94-102 (filed Sept. 25, 2007) (reiterating that C&CC is the only provider of mobile service in approximately 8,000 square miles, or 80%, of its service area, and also noting that a majority of C&CC customers who own analog phones also own location-capable digital phones).

<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>32</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

however, of Congress's directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.<sup>33</sup>

12. We remain concerned that C&CC's efforts have fallen short in achieving compliance with the 95% benchmark. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of C&CC's customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of C&CC's service area if those customers were forced to convert from analog phones to location-capable handsets. It thus appears likely that strict enforcement of C&CC's current September 23, 2007 deadline would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.<sup>34</sup> We therefore conclude that some relief from the deadline is warranted pursuant to the ENHANCE 911 Act.<sup>35</sup> Accordingly, we grant a six-month extension from the date of release of this Order, subject to certain conditions and reporting requirements so that the Commission can continue to monitor C&CC's progress in meeting the 95% handset penetration benchmark.<sup>36</sup> Although we grant a limited extension to C&CC, we emphasize that absent C&CC undertaking all necessary efforts to ensure timely compliance, C&CC should not assume that the Commission would act favorably on any future request for relief based on the same grounds.

13. We decline to grant the full relief requested because C&CC has not established a "clear path to full compliance" with the 95% handset penetration requirement. While we appreciate the efforts C&CC has undertaken to date, C&CC's Petition does not demonstrate with sufficient specificity that those efforts will achieve a 95% penetration rate by its requested deadline. Furthermore, the efforts to encourage its customers to upgrade to location-capable handsets that C&CC has described in its quarterly updates have remained substantially the same over the past year, and C&CC has not indicated that it plans to adopt a more aggressive approach in the future.<sup>37</sup> Under these circumstances, we find that C&CC has not justified the full relief it requested.

14. *Conditions.* As a condition of the relief granted herein, C&CC has an ongoing obligation, until it achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

15. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require C&CC to file status reports every February 1, May 1, August 1, and November 1, but extend these reporting requirements until May 1, 2009.<sup>38</sup> These reports

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<sup>33</sup> See *supra* ¶ 7.

<sup>34</sup> Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

<sup>35</sup> Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether C&CC's Request satisfies the Commission's E911 waiver criteria.

<sup>36</sup> We note that the Commission has not received any objections from the public safety community specific to the instant request.

<sup>37</sup> See C&CC May 1, 2007 Quarterly Report at 3; C&CC February 1, 2007 Quarterly Report at 2-3; C&CC November 1, 2006 Quarterly Report at 2. C&CC does indicate that it plans to conduct a "door-to-door campaign" in coming months. Petition at 4. But the Petition does not include enough information about this campaign for us to conclude that it constitutes a more aggressive approach.

<sup>38</sup> See *C&CC Waiver Order*, 21 FCC Rcd at 3768 ¶ 22. We note that we are requiring C&CC to file status reports beyond the date on which we require it to achieve 95% penetration among its subscribers of location-capable

(continued....)



shall include the following information, as previously required: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. To comply with the sixth reporting requirement – status in achieving compliance – C&CC must include a detailed, specific explanation of how it arrived at its estimate of whether it is on track to meet the compliance deadline, including an explanation of any assumptions it has made. It must also include a discussion of how its compliance efforts compare with the efforts of other Tier III carriers – particularly efforts the Commission has cited in previous orders<sup>39</sup> – and an explanation of why C&CC has chosen the compliance efforts it has chosen.<sup>40</sup> We emphasize that irrespective of the relief we grant in this Order, we fully expect C&CC to achieve compliance as quickly as possible.

#### IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Extension of Waiver filed by Cable & Communications Corporation IS GRANTED IN PART, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is April 26, 2008.

17. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek Poarch  
Chief  
Public Safety and Homeland Security Bureau

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handsets. We believe it is important to continue monitoring C&CC's progress for an additional year following its revised deadline.

<sup>39</sup> See, e.g., Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation, WT Docket No. 05-286, *Order*, 22 FCC Rcd 400, 411-12 ¶ 32 (2007) (describing compliance efforts undertaken by Tier III carriers).

<sup>40</sup> For example, to the extent that C&CC offers free location-capable handsets as an inducement to its subscribers to upgrade non-location-capable handsets, it should explain whether these free handsets were offered without requiring a renewed or extended service contract.